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No. ———

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

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STATE OF MISSOURI, *et al.*,
Petitioners,

v.

CRATON LIDDELL, *et al.*,
Respondents.

———

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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QUESTIONS PRESENTED

1. Whether, under *Dayton Board of Education v. Brinkman*, 433 U.S. 406 (1977), a federal court may require a state to fund a Settlement Agreement drafted by other parties without making findings that the provisions of the Agreement are necessary to remedy the incremental effects of a prior constitutional violation.

2. Whether, under *Milliken v. Bradley*, 418 U.S. 717 (1974), a federal court may require a state to implement a multi-district remedy for segregation within a single district in order to achieve a racial balance not afforded by the population of students in the district where the violation occurred.

3. Whether, under *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1972), a federal court may require a state to provide one school district with new programs and facilities in order to meet a voluntary state standard that is not met by numerous other school districts throughout the state.

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* A complete list of parties to the proceeding is contained in the caption to the opinion of the court of appeals. Pet. App. 1a-13a.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

The State of Missouri, and certain of its agencies and officials, petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals is not yet reported. The opinion is reprinted as Appendix A in the separate appendix to this petition. The Memorandum Opinion of the district court is reprinted at 567 F. Supp. 1037. It is reprinted as Appendix B in the separate appendix to the petition.

JURISDICTION

The judgment of the court of appeals *en banc* was entered on February 8, 1984. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATEMENT

This case involves an order, drafted by other parties as a settlement plan, requiring the State of Missouri to pay

for the transfer of students throughout 24 independent school districts in the St. Louis metropolitan area and to rebuild schools and revamp programs within the St. Louis school district itself. The cost of the plan has been conservatively estimated at between $50 and $80 million per year. A divided Court of Appeals for the Eighth Circuit, sitting *en banc*, affirmed the order with minor modifications.

This case, like many cases involving state programs, has had a long history. Although that history is set out in some detail in the court of appeals' opinion, Pet. App. 15a-21a, a brief review is necessary to understand the order at issue in this petition.

1. *The Intradistrict Stage.* The boundaries of the St. Louis school district, which were established in 1876, are identical to the City boundaries. Until 1954 the St. Louis schools were segregated pursuant to state law.[1] In 1972 plaintiffs filed this action on behalf of black students in the city schools charging that the Board of Education of the City of St. Louis (the "City Board") had "effected and perpetuated racial segregation and discrimination" in its schools. Pet. App. 136a. Neither the State of Missouri nor any of its officials were named as defendants.

The case was finally tried in 1977 with an expanded list of plaintiffs and defendants, including the State of Missouri and certain of its agencies and officials as defendants. After a lengthy trial, the district court denied plaintiffs any relief, holding that resort by the City Board to a neighborhood school policy, after the decision in *Brown*, had eliminated segregation in the city schools. *Liddell v. Board of Education*, 469 F. Supp. 1304 (E.D. Mo. 1979). Although the court recognized that St. Louis had numerous all-black or largely all-black schools, it

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[1] Immediately after the decision in *Brown v. Board of Education*, 347 U.S. 483 (1954), the Missouri Attorney General held that the law was unenforceable. See Op. No. 96 to Hubert Wheeler, June 30, 1954.

noted that after 1954 the white population in the City had substantially decreased while the black population had taken the opposite course, resulting in a school system with approximately three black students for every white student. *Id.* at 1318-1323. The court also found that, while the State of Missouri had required segregation by law until 1954, it had "effectively removed all barriers at the state level to the desegregation of the schools" *Id.* at 1314.

The Eighth Circuit, sitting *en banc*, reversed. *Adams v. United States*, 620 F.2d 1277 (1980). The court of appeals held that the neighborhood school policy adopted by the City Board "had very little, if any, effect on the dual school system in the City." *Id.* at 1284. While noting that "the district-wide percentage of black students had increased to 75.5%," the court pointed out that 14 of the 119 regular elementary and secondary schools were "90% or more white," leaving 78 of the schools "90% or more black." *Id.* at 1285. The court found that this result was "inevitable and unquestionably foreseeable: * * * the black schools remained predominately black and the white schools remained predominately white, with very few exceptions." *Id.* at 1287. After also reviewing particular acts of the City Board, taken after 1954 to preserve segregation, the court concluded: "We have no alternative but to require a system-wide remedy for what is clearly a system-wide violation." *Id.* at 1291.

2. *The Interdistrict Stage.* Although the court of appeals talked in terms of a "system-wide remedy," it sought, from the very first, to expand the remedy to include other independent school systems in the metropolitan area. See 620 F.2d at 1295-97. On remand, therefore, the district court not only implemented a plan for moving students among the city schools but also ordered the State and the City Board (as well as the United States) to explore the possibility of a cooperative

interdistrict remedy. *Liddell v. Board of Education*, 491 F. Supp. 351, 353 (E.D. Mo. 1980).[2] At the same time, the City Board essentially switched sides, filing a new complaint (along with suburban students and two of the earlier plaintiff groups) against the State and certain of the independent suburban school districts. That complaint sought to impose mandatory interdistrict relief, in particular the transportation of pupils throughout the metropolitan area.[3] Pet. App. 138a-141a.

Faced now with both the so-called voluntary interdistrict plan under paragraph 12(c) and the complaint for involuntary interdistrict relief filed by the City Board and plaintiffs, the court ordered that the two proceedings be severed and that the 12(c) stage go forward first.[4] The court then reversed its field, however, turning

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[2] The order was in two primary parts. The first (paragraph 12(a)) was "[t]o make every feasible effort to work out with the appropriate school districts in the St. Louis County and develop * * * a voluntary, cooperative plan of pupil exchanges which will assist in alleviating the school segregation in the City of St. Louis * * *." The second (paragraph 12(c)) was "[t]o develop and submit to the Court * * * a suggested plan of interdistrict school desegregation necessary to eradicate the remaining vestiges of government-imposed school segregation in the City of St. Louis *and St. Louis County*" (emphasis added). See 491 F. Supp. at 353. This order suggested a curious change in focus since no trial regarding conditions in St. Louis County (i.e., the suburbs surrounding the city) had ever been held.

[3] The court of appeals affirmed the May 21, 1980 order of the district court with the component paragraphs 12(a) and 12(c). *Liddell v. Board of Education*, 667 F.2d 643 (1981), *cert. denied*, 454 U.S. 1081, 1091 (1982). With regard to paragraph 12(a), the court found no impermissible degree of compulsion against the State, observing: "Because the plan is to be voluntary, no question is raised about whether the district court will be able to enforce the plan once it is drawn up." *Id.* at 651. The court also found that the "suggested" plan of paragraph 12(c) was acceptable "to the extent any such segregation was imposed by the State or other defendants * * *." *Id.* at 651.

[4] The court of appeals declined to review the propriety of the severance order, holding that it was not appealable on an inter-

its attention to the suit for mandatory interdistrict relief. Following an unusual procedure, the court first disclosed the remedy that it would impose *if* liability were found: dissolution of all the independent school districts and the creation of a single unified metropolitan school district with a uniform tax rate. Pet. App. 19a. The court then scheduled hearings on the question whether any interdistrict violation had in fact occurred.

Those hearings were never held. Faced with the prospect of one large district instead of separate autonomous ones, the City Board, the suburban school boards, and the plaintiffs entered into a settlement agreement that, by its terms, was intended "to settle the litigation regarding paragraph 12(c) *and the plaintiffs' interdistrict claims*" (emphasis added). See Appendix D, Pet. App. 149a-232a. The Agreement called for busing more than 15,000 students from city to suburbs, suburbs to city, and suburb to suburb, Pet. App. 152a-153a; 159a-173a, as well as expanded magnet schools in the city to attract suburban students and new magnet schools in the suburbs. Pet. App. 153a-154a; 173a-183a. The Agreement also contemplated substantial changes to improve "the quality of education throughout the [city schools] * * *." Pet. App. 154a-155a; 183a-203a. In addition to the provisions aimed specifically at "non-integrated schools," Pet. App. 197a-200a, the Agreement set a city-wide pupil-to-teacher ratio of 25:1 (20:1 in "non-integrated schools"), Pet. App. 185a, and provided for "all day kindergarten programs," Pet. App. 190a, "the res-

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locutory basis. *Liddell v. Board of Education*, 677 F.2d 626, 629 (8th Cir.), *cert. denied*, 103 S. Ct. 172 (1982). The court noted that "we are being asked not to rule on a specific plan but to anticipate what the district court may have in mind and to instruct it as to what it can or cannot do." *Id.* at 641. The court, however, did uphold an order requiring the State to fund limited transfers under paragraph 12(a). The sole basis given was that "the state had substantially contributed to the segregation of the public schools of the City of St. Louis." *Id.* at 629.

toration of such specialized staff as art, music and physical education teachers," *ibid.*, coaches for athletic teams, "nurses, social workers, psychologists and psychological examiners," *ibid.*, preschool centers, Pet. App. 191a, library and media services, Pet. App. 191a-192a, audio-visual services, and so forth. The Agreement also included extensive capital improvements throughout the city school system as part of an effort "to ensure a learning environment which complements and supports the instructional program in a manner which optimizes the learning process." Pet. App. 195a. The Agreement provided for, and was expressly contingent upon, an order from the district court requiring the State, which was not a party to the Agreement, to pay for most of it. Pet. App. 223a-226a.

3. *The Decisions Below.* Although the only finding of liability against the State was that it had once required segregation of students within the city schools, the district court ordered the State to fund all of the interdistrict transfers, all of the magnet schools, one-half of the "quality education" components, and one-half of the capital improvements (in whatever amount selected by the City Board). Pet. App. 96a-97a. In so doing, the court did not inquire into, or make any findings about, either the liability of the State on "plaintiffs' interdistrict claims" or the relationship between these programs and segregation in the city schools themselves. Rather, the court undertook only to decide "whether [the] proposed Settlement Plan is fair, reasonable, and adequate for the resolution of the 12(c) interdistrict phase of the case," Pet. App. 103a, 108a, the inquiry required under Rule 23, Fed. R. Civ. P., to determine whether the settlement of a class action should be approved. Having found the Plan sufficient for the class members, the court imposed the Plan on the State, saying that it had the power to do so because the State "has already been adjudicated a primary constitutional violator in causing school segregation in the City of St. Louis * * *." Pet. App. 129a.

The court expressly held that it was required to approve the Settlement Plan *without alteration* "except insofar as the Court finds technical, perfecting, and non-substantive changes necessary and reasonable." Pet. App. 119a.[5]

The Eighth Circuit, sitting *en banc*, affirmed most of the order by a divided vote. Pet. App. 1a-94a. Saying that "[t]his Court has repeatedly authorized the interdistrict transfer of students as a fundamental element of an effective remedy for the unconstitutional segregation of the city schools," Pet. App. 25a, the court first decided that the part of the order contemplating busing was law of the case. Pet. App. 25a-30a. The court went on to find that the interdistrict transfers were constitutionally permissible in light of its concern that "[t]he potential for integration within the district * * * was limited by the fact that almost eighty percent of the students were black, and by the district court's finding that if it integrated the city schools by imposing an eighty/twenty ratio in each school, an all-black school system would probably result." Pet. App. 32; see *id.* at 30a-36a. The court noted that the remedy "returns the largest number of victims to integrated schools * * *." Pet. App. 34a.[6]

The court also affirmed most of the order regarding quality education and the rebuilding of the city schools. Pet. App. 45a-59a. In reviewing the quality education

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[5] The part of the Plan pertaining to quality education was amended by the plaintiffs and City Board before its submission to the court. The amended Plan is set forth as Appendix E in the separate appendix to this petition.

[6] As part of the interdistrict remedy, the court approved magnet schools throughout the City with "twelve to fourteen thousand [students] to be enrolled in city magnets." Pet. App. 39a. The purpose of the magnets was to be "attracting suburban white students; only those schools which demonstrate such a probability should be approved." Pet. App. 43a.

program, however, it relied upon a standard unmentioned by the district court, affirming "those programs necessary to permit the city schools to regain, and then retain, their class AAA status." Pet. App. 54a.[7] While expressing some doubt about what the standard covered, the court mentioned specifically library and media services, audio-visual services, lower class size, and restoration of art, music, and physical education. Pet. App. 56a. The court also approved the requirement of preschool centers, planning and program development, all-day kindergartens, parental involvement, desegregation planning, long-range planning, and public affairs. Pet. App. 54a-56a. With regard to the extensive capital rebuilding program, the court simply concluded that "[t]he district court did not err in holding that the State had an obligation to pay one-half of the costs of the capital improvement program necessary to restore the city facilities to a constitutionally acceptable level." Pet. App. 58a-59a. It did not indicate what that level might be.[8]

Judge Gibson dissented from affirmance of the interdistrict plans and the rebuilding programs. Pet. App. 73a-86a. Pointing out that "the nature of the constitutional violation by the State of Missouri has been outlined only most generally," Pet. App. 73a, he discussed in some detail just what constitutional violation had actually been proved in this case, noting: "[t]he con-

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[7] The Missouri Department of Elementary and Secondary Education designates each school system as AAA, AA, or unclassified according to its own criteria. A change in status has no effect on state funding.

[8] The court declined to approve new magnet schools in the suburbs and suburb-to-suburb transfers, saying that the latter were "not geared to remedy the violation found within the City." Pet. App. 38a-39a, 43a-44a. When the State sought to have the suburbs assume the cost of the transfers, however, the court of appeals, despite its holding, ordered the State to continue paying all of the costs during this school year and an unspecified share of costs after that. Order of March 5, 1984. Four judges dissented.

stitutional violation found on the part of the State and the City of St. Louis is failure to take necessary actions to desegregate the schools in the City of St. Louis and particularly to desegregate the schools on a system-wide basis, including the predominantly white schools in south St. Louis and the predominantly black schools in north St. Louis." Pet. App. 76a. Because "[t]here is no hint of a finding that there was an interdistrict effect flowing from this intradistrict violation," Pet. App. 79a, Judge Gibson concluded that "the intradistrict violations found are insufficient to require the interdistrict remedy agreed to by all of the parties except the State of Missouri, and to impose the cost of this remedy on the State of Missouri." Pet. App. 79a. Similarly, with regard to the rebuilding program, he observed: "There is no finding in the district court order and no conclusion by this court that the condition of the physical plant of the St. Louis schools is related in any way to the constitutional violations of either the City Board or the State." Pet. App. 84a.[9]

Judge Bowman, while agreeing with Judge Gibson on these points, dissented on the issue of quality education as well. Pet. App. 87a-94a. Judge Bowman noted the lack of findings on this issue, saying that "[b]ecause of the lack of appropriate inquiry and fact-finding below, there is now no jurisprudentially acceptable way for us to determine whether any of these items are needed to remedy the Constitutional violation." Pet. App. 88a n. 1. Relying on the decision in *Dayton Board of Education v. Brinkman*, 433 U.S. 406 (1977) (*Dayton* I), he pointed out that the district court had made no effort "to determine the incremental segregative effects of the Constitutional violation committed by the defendants or

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[9] Finding any defects to be "purely and simply the result of the neglect of the City Board to fulfill its responsibilities," Judge Gibson concluded that "[t]o order the State to pay half of this expense is to require a remedy beyond the constitutional wrong that has been found * * *." Pet. App. 84a.

to compare the present City school population to what it would have been absent a violation." Pet. App. 91a. He also noted that the court had engaged in "no tailoring of the order to redress only 'that difference' referred to in *Dayton* or to restore students in the City schools 'to the position they would have occupied in the absence of such conduct' as required by *Milliken* [*v. Bradley*, 433 U.S. 267 (1977) (*Milliken* II)]." Pet. App. 91a.[10]

REASONS FOR GRANTING THE WRIT

This case involves an unprecedented order. In the 30 years since *Brown v. Board of Education*, 347 U.S. 483 (1954) (*Brown* I) was decided, no State has ever been faced with a federal order requiring it to transport more than 15,000 students throughout 24 independent school districts in a metropolitan area, to pay for one local school system to meet voluntary state standards of education not met by many other school systems throughout the State, and to support an open-ended rebuilding program for local schools. Yet the courts below have imposed just such obligations on the State of Missouri at an estimated cost of more than $500 million in the next ten years. To make matters worse, the courts reached that result "by a process that can only be described as brute force." *Levy v. Louisiana*, 391 U.S. 68, 76 (1968) (Harlan, J., dissenting).

This case merits review for several reasons. To begin with, although this Court has said that remedial orders should be supported by proper findings about the "incremental effect" of any constitutional violation, *Dayton Board of Education v. Brinkman*, 433 U.S. 406, 420

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[10] Judge Bowman stressed the particular need for proper fact-finding in this case, in light of the effort to impose a settlement agreement in the form of a court order, saying: "[I]t would be a most remarkable coincidence if a plan intended to settle the broad interdistrict claims in this case was at the same time properly tailored to cure only the effects of the intra-district violation." Pet. App. 92a.

(1977) (*Dayton* I), the district court ignored, and the court of appeals expressly renounced, that requirement. Pet. App. 32a. The order thus is not the product of hearings in the district court to identify incremental effects or, indeed, of any effort by the court to mark out constitutional boundaries. Rather, the plan was drafted as a settlement by the plaintiffs and local school boards, expressly made contingent on enforced funding to be ordered by the district court, and then imposed by the court on the State in bulk with no real hearing and only a few sentences of conclusory analysis. For that procedure to produce a properly tailored order would be a judicial miracle.

Quite apart from its procedural origins, however, the remedy is intolerable. The extensive busing, for example, is not meant to reverse the separation of black and white students in the city schools but to achieve a racial balance not available within the city schools themselves. This Court has made quite clear, however, that a unitary school system need not have any particular degree of racial balance. *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971); *Milliken v. Bradley*, 433 U.S. 267 (1977) (*Milliken* II). Furthermore, the courts below showed no hesitation about requiring a 24-system remedy for a single system violation. That requirement not only is inconsistent with *Milliken v. Bradley*, 418 U.S. 717 (1974) (*Milliken* I), since there is no evidence of any violation or impact beyond the city system, but is inconsistent with every major school case in the past three decades. *Brown v. Board of Education*, 349 U.S. 294 (1955) (*Brown* II); *Swann v. Charlotte-Mecklenburg Board of Education*, *supra*; *Milliken* I *supra*; *Dayton Board of Education v. Brinkman*, 443 U.S. 526 (1979) (*Dayton* II); *Columbus Board of Education v. Penick*, 443 U.S. 449 (1979). Finally, the bloated quality education and rebuilding program flies in the face of holdings that the Constitution does not guarantee a right to public education at all, much less a right "to develop to the

limit of [each student's] ability," Pet. App. 134a, or to attend AAA schools. Pet. App. 44a. See *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 35 (1972).

1. *The Order was Imposed Without Proper Findings.* Although the terms of the order by themselves warrant review by this Court, see pages 16-28, *infra*, the process by which they were imposed on the State is, in many respects, even more important and troubling. For, despite the extraordinary scope of the order, the district court took it lock, stock, and barrel from a settlement plan drafted by some of the parties and funded it, as those parties had intended, from the State treasury. Indeed, as if to emphasize the lack of judicial inquiry, the court expressly held that it had no power to alter the Settlement Plan except for "technical, perfecting, and non-substantive changes * * *." Pet. App. 119a.

It is hard to imagine a procedure less likely to produce a properly refined remedy. The framing of remedies in all constitutional cases depends on, first, an accurate definition of the rights at issue and, second, an appreciation of the limits of equitable power. This Court has recognized on many occasions that a district court has considerable discretion in devising appropriate remedies. See, e.g., *Swann v. Charlotte-Mecklenburg Board of Education*, *supra*; *Milliken* II, *supra*. At the same time, however, the Court has emphasized that such discretion must be exercised within the limitations derived from substantive law. See *Milliken* II, *supra*, 433 U.S. at 281; *Swann v. Charlotte-Mecklenburg Board of Education*, *supra*, 402 U.S. at 16. See also *Oliver v. Kalamazoo Board of Education*, 706 F.2d 757 (6th Cir. 1983). The rule has thus been established that federal equitable powers "[can] be exercised only on the basis of a violation of the law and [can] extend no farther than required by the nature and extent of that violation." *General Building Contractors Ass'n v. Pennsylvania*, 458 U.S. 375, 399 (1982).

If these principles are to mean anything, federal judges, faced with the need to draw a constitutional line, must inquire into and then explain why the line is drawn in a particular place. Unless a court gives some content to the rights at issue, and identifies the relationship between those rights and the chosen remedy, it is mere guesswork to determine whether a remedy is no broader than the violation or whether the court has confused a social goal, such as better programs or better schools, with a constitutional requirement. Thus, this Court has stated that "the case for displacement of the local authorities by a federal court in a school desegregation case must be satisfactorily established by factual proof and justified by a reasoned statement of legal principles." *Dayton* I, *supra*, 433 U.S. at 410. Or, as the Court said in *Milliken* II *supra*, "[t]he well-settled principle that the nature and scope of the remedy are to be determined by the violation means simply that federal court decrees must directly address and relate to the constitutional violation itself." 433 U.S. at 281-82.[11]

The proper inquiry, in our view, requires a district court to identify the "incremental effect" of the constitutional violation, i.e., the conditions caused by the violation rather than by other neutral factors. See *Dayton* I, *supra*, 433 U.S. at 420. Although the Eighth Circuit held that such findings are unnecessary in cases involving more than "isolated instances of discrimination," Pet. App. 32a n. 10, we think that analysis confuses the process with the result. The existence of broader discrimination naturally may support the imposition of a broader remedy, see page 23, *infra*, but the extent of the violation does not relieve the federal courts of the obligation to identify the existing conditions ac-

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[11] Individual Justices have also noted the importance of proper findings. See *Estes v. Metropolitan Branch, Dallas NAACP*, 444 U.S. 437 (1980) (Powell, J. dissenting); *Cleveland Board of Education v. Reed*, 445 U.S. 935 (1980) (Rehnquist, J., dissenting).

tually caused by the violation. See *Washington v. Davis*, 426 U.S. 229, 240 (1976) ("[t]he essential element of *de jure* segregation is a current condition of segregation *resulting from* intentional state action" (emphasis added) (internal quotes omitted)). Because "federal-court decrees exceed appropriate limits if they are aimed at eliminating a condition that does not violate the Constitution or does not flow from such a violation," *Milliken* II, *supra*, 433 U.S. at 282, the courts must determine in *every* constitutional case which conditions flow from a constitutional violation and which do not. In school cases, for example, it is obvious that the racial composition of the schools and the level of education are affected by many factors other than governmental decisions about where to assign pupils, including choices made by families about housing, by taxpayers about bond issues or rate hikes, by parents about private schooling, and so forth. While a court may not be able to isolate these elements with mathematical precision, neither can it just assume that every shortcoming in a local school system is the result of unconstitutional state action. Proper findings are the means of sorting out what caused what.

The need for a well-defined inquiry was especially compelling in this case. For the order against the State is not an order at all in the usual sense: it is a settlement plan imposed by judicial force on a nonsettling party.[12] Furthermore, the Plan was drafted to settle not only the case involving the St. Louis district but a new and much broader case, brought in part by students in the independent suburban districts, on which no trial had even been held. Pet. App. 109a-113a. While these circumstances should have alerted the court to make an especially close scrutiny of its constitutional basis, and

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[12] The order leaves little doubt about its origins. Paragraph 2 of the order decrees that "[*t*]*he Settlement Plan* * * * shall be implemented as of this date for the 1983-1984 school year, and all signatories, as well as State defendants, are required to comply with all the provisions thereof." Pet. App. 95a.

to make sure that the parties were not simply foisting their own views onto the State, the court limited itself to a hearing under Rule 23 to see whether it was fair to the plaintiffs (including the suburban plaintiffs), Pet. App. 108a, and then adopted the Plan without any substantive changes at all. As Judge Bowman correctly noted in his dissent, "[b]ecause of the lack of appropriate inquiry and fact-finding below, there is now no jurisprudentially acceptable way for us to determine whether any of these items are needed to remedy the Constitutional violation." Pet. App. 88a n. 1.[13]

"The development of the law concerning school desegregation has not reduced the need for sound factfinding by the district courts * * *." *Columbus Board of Education v. Penick, supra,* 443 U.S. at 470 (Stewart, J., concurring in result). See also Rule 52, Fed. R. Civ. P. This Court, at least twice before, has remanded school cases for findings. See *School District of Omaha v. United States,* 433 U.S. 667 (1977); *Brennan v. Armstrong,* 433 U.S. 672 (1977). Similarly, the First Circuit has recently required a district court to provide proper "findings indicating specifically why and in what respect the order is necessary and appropriate to achieve valid desegregation goals as yet unfulfilled." *Morgan v. McKeigue,* 726 F.2d 33, 35 (1984). Noting that "[i]t is not self-evident from the facts immediately before us that an order of this character is a lawful exercise of the courts' desegregation powers," the court stated: "Both the School Committee and this court are entitled

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[13] A plurality of the Fifth Circuit has observed: "While it is well and very well to extoll the virtues of concluding * * * litigation by consent * * *, we think it quite another [matter] to approve ramming a settlement between two consenting parties down the throat of a third and protesting one, leaving it bound without trial to an agreement to which it did not subscribe." *United States v. City of Miami,* 664 F.2d 435, 451 (5th Cir. 1981) (*en banc*) (Gee, J. for 11 judges). The order here, adopting the Settlement Plan and then making the State bear most of its cost, has precisely that effect.

to a clear statement of the district court's reasoning and the factual basis for the order." *Ibid.* The State of Missouri, faced with a more than half-billion dollar order, deserves no less.

2. *The Remedy Is Unrelated to Any Proven Violation.* It is not surprising that, in light of the process by which it emerged, the order in this case is wrong both in kind and in degree. Although the only violation ever found in this case was the segregation of white and black students within one district, the remedy involves more than 20 other independent districts unaffected by the violation and revamps buildings and programs throughout the City at state expense. In our view, the order not only misapprehends the constitutional rights at issue but also the scope of any allowable remedy.

a. *The Multi-district Remedy.* It is important to any understanding of this case to note that, unlike many school cases previously before this Court, it involves an urban school system that has a racially unbalanced school population. The St. Louis school district has four black students (80%) for every white student (20%). Pet. App. 32a.[14] Segregated by law until 1954, the district was found in 1980 to retain vestiges of that segregation, particularly in the fact that, despite the racial population of the district, several of its schools were almost totally white. *Adams v. United States*, *supra*, 620 F.2d at 1285; see also Pet. App. 73a-76a. There is no dispute over the duty to eliminate the segregation of students within the St. Louis school district. What the State does dispute, and what is at issue here, is the duty to go beyond the district to achieve a racial balance unavailable within the district itself.

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[14] It would thus be perfectly natural, indeed unavoidable, in St. Louis to have schools with a predominantly black student body. That fact distinguishes this case from cases like those in Dayton and Columbus where many predominantly black schools existed despite district-wide percentages of black students of 43% and 32% respectively. See *Dayton* II, *supra*, 443 U.S. at 529; *Columbus Board of Education v. Penick*, *supra*, 443 U.S. at 452.

Our position, simply put, is that the federal courts cannot require the State to transport students among districts in order to achieve a racial balance unavailable within the district where the violation occurred. As this Court said in *Milliken* I, *supra*, "[t]he constitutional right of the [black plaintiffs] is to attend a unitary school system *in that district.*" *Id.* at 746 (emphasis added). In turn, a unitary school system has always been understood to be one "in which racial discrimination [has been] eliminated root and branch." *Green v. County School Board*, 391 U.S. 430, 438 (1968); see also *Columbus Board of Education v. Penick*, *supra*, 443 U.S. at 458 (duty to " 'effectuate a transition to a racially nondiscriminatory school system,' " quoting *Brown* II, *supra*, 349 U.S. at 301). The Seventh Circuit has thus noted that a unitary school system can be achieved, by definition, within a single district from which the vestiges of prior segregation have been purged. See *United States v. Board of School Commissioners of the City of Indianapolis*, 677 F.2d 1185, 1187 (1982).

The courts in this case did far more than order the State to provide a unitary school system in St. Louis. Upholding a remedy that included numerous other separate school districts, the court openly expressed its concern over the racial composition of the St. Louis district, noting: "The potential for integration within the [St. Louis] district * * * was limited by the fact that almost eighty percent of the students were black, and by the district court's finding that if it integrated the city schools by imposing an eighty/twenty ratio in each school, an all-black school system would result." Pet. App. 32a. But it is one thing to note this condition as a matter of fact, quite another to order the State to correct it as though it were the result of a constitutional violation. Neither the district court nor the court of appeals made any determination that this racial distribution was caused by the earlier state law, nor do we think that they could have done so. It is unquestioned that

the district lines have been unchanged since 1876, negating any inference that the lines among the various districts were drawn with a discriminatory purpose. See 469 F. Supp. at 1313. Furthermore, the record contains no evidence that the *de jure* policy caused more black students to live in St. Louis or more white students to live in the suburbs. Indeed, to the extent any evidence in the record has been developed, it would seem to show just the opposite.[15]

While it is true that a unitary school system in St. Louis will have many largely black schools, that condition occurs as a natural consequence of the racial composition of the district, not as the result of invidious discrimination by the State. This Court has explicitly warned against "equating racial imbalance with a constitutional violation calling for a remedy." *Milliken* I, *supra*, 418 U.S. at 741 n. 19. Although a State may not compel segregation, or sit by as the effects of past segregation outlive the compulsion, it has no constitutional duty to create integration where, *without regard to any prior violation*, it would not have otherwise existed. "[T]he Court has consistently held that the Constitution is not violated by racial imbalance in the schools, without more." *Milliken* II, *supra*, 433 U.S. at 280 n. 14. "An order contemplating the 'substantive constitutional right [to a] particular degree of racial balance or mixing' is therefore infirm as a matter of law." *Ibid.*[16]

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[15] In 1954, when *Brown* I was decided, the number of white students in the city schools outnumbered black students by a ratio of almost two to one; by the 1978-79 school year, the number of black students had risen from 30,880 to 54,584, while the number of white students had fallen from 58,595 to 18,638. *Liddell v. Board of Education, supra*, 469 F. Supp. at 1314, 1329. These figures, if they have anything to do with school policies at all, are more indicative of "white flight" from an integrated school system, than of continuing effects from a segregated one.

[16] The Sixth Circuit has observed that "[a] school district has no affirmative obligation to achieve a balance of the races in the schools when the existing imbalance is not attributable to school

In their effort to integrate students from the city and suburbs, the courts below thus ran afoul of their obligation "to tailor 'the scope of the remedy' to fit 'the nature and extent of the constitutional violation.'" *Hills v. Gautreaux*, 425 U.S. 284, 293-94 (1976). As we have discussed, a proper remedy must be addressed to the difference between things as they are and things as they would have been but for the constitutional violation (the "incremental effect" noted in *Dayton* I). See *Dayton* I, *supra*, 433 U.S. at 420; *Columbus Board of Education v. Penick*, *supra*, 443 U.S. at 465; *Berry v. School District of City of Benton Harbor*, 698 F.2d 813, 819 (6th Cir. 1983); *Parents Association of Andrew Jackson High School v. Amback*, 598 F.2d 705, 715 (2d Cir. 1979).[17] Although federal judges may naturally wish to advance their notions of the common good, see, e.g., *Bell v. Wolfish*, 441 U.S. 520, 562 (1979), this Court has admonished that, in cases like this one, "[t]he elimination of racial discrimination in public schools * * * should not be retarded by efforts to achieve broader purposes lying beyond the jurisdiction of school authorities." *Swann v. Charlotte-Mecklenburg Board of Education*, *supra*, 402

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policies or practices and is the result of housing patterns and other forces over which school administrators had no control." *Alexander v. Youngstown Board of Education*, 675 F.2d 787, 791 (1982) (internal quotes omitted). See also *United States v. Board of Education of Valdosta, Georgia*, 576 F.2d 37, 39 (5th Cir. 1978) ("remedy should be tailored to achieving a unitary school system rather than a systemwide racial balance"); *Armstrong v. Board of School Directors of the City of Milwaukee*, 616 F.2d 305, 321 (7th Cir. 1980) ("no constitutional right to a particular level of racial balance").

[17] The Second Circuit in *Andrew Jackson* reversed an order requiring "school authorities to implement an affirmative plan designed to achieve racial balance at Jackson." 598 F.2d at 715. Noting that Jackson was "already a full minority school" and that this condition was not the result of unlawful discrimination, the court held: "The order to balance Jackson racially, therefore, was unauthorized since it went beyond remedying any conceivable incremental injury caused by the Plan, if the Plan were, indeed, unconstitutional." *Ibid.*

U.S. at 22. To avoid trespass on matters properly left to the other branches of government, a remedy must "indeed be remedial in nature, that is, it must be designed as nearly as possible 'to restore the victims of discriminatory conduct to the position they would have occupied in the absence of such conduct.'" *Milliken* II, *supra*, 433 U.S. at 280, quoting *Milliken* I, *supra*, 418 U.S. at 746; see *United States v. Texas Education Agency*, 600 F.2d 518, 527 (5th Cir. 1979).

Although the Eighth Circuit defended the remedy here on the ground that "[i]t returns the largest number of victims to integrated schools," Pet. App. 34a, that observation begs the basic question: whether they would have had that opportunity *absent the constitutional violation*. If, absent the violation, the City of St. Louis would still have been faced with the prospect of numerous one-race or largely one-race schools, because of a racial distribution caused by personal choices regarding housing or employment or other factors not attributable to proven unconstitutional conduct by the State, then the remedy here goes well beyond that necessary to correct for conditions caused by compulsory segregation. See *Pasadena City Board of Education v. Spangler*, 427 U.S. 424, 435-37 (1976). Similarly, even if the prior policy still causes a maldistribution of students within the city schools but has no effect on the relationship between city and suburban schools, the multidistrict remedy imposed here again would be too broad. The existence of a violation in one area does not *ipso facto* infect all surrounding areas without any showing that they were part of the violation or even affected by it.[18]

[18] The magnet schools, like the busing provisions, are also intended to achieve integration beyond that afforded by the St. Louis district itself. See Pet. App. 43a; note 6, *supra*. Although the court of appeals suggested that the dissenting opinion of Justice Powell in *Columbus Board of Education v. Penick*, *supra*, 443 U.S. at 488, "implicitly encouraged the use of magnet schools," Pet. App. 41a, the quoted language makes clear the difference between voluntary programs and programs forced on a State, precisely the point missed by the courts below: "These and like plans, if adopted

This principle was set forth most explicitly in *Milliken* I, *supra*, the only case decided by this Court that involved a comparable remedy. There, the Court noted that "[b]efore the boundaries of separate and autonomous school districts may be set aside by consolidating the separate units for remedial purposes or by imposing a cross-district remedy, it must first be shown that there has been a constitutional violation within one district that produces a significant segregative effect in another district." *Id.* at 744-45. The Court did not rule out an interdistrict remedy in all cases, requiring instead a showing "that racially discriminatory acts of the state or local school districts, or of a single school district have been a substantial cause of interdistrict segregation." *Id.* at 745. The Court concluded, however, that "without an interdistrict violation and interdistrict effect, there is no constitutional wrong calling for an interdistrict remedy." *Ibid.* See also *Taylor v. Ouachita Parish School Board*, 648 F.2d 959, 964-69 (5th Cir. 1981).

While conceding that no interdistrict violation or effect had been shown in this case,[19] the Eighth Circuit took the position that *Hills v. Gautreaux*, *supra*, dispensed with these requirements in the absence of objecting school dis-

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voluntarily by States, also could help counter the effects of racial imbalance between school districts that are beyond the reach of judicial correction." 443 U.S. at 488.

[19] In reviewing the interdistrict transfers, the court of appeals observed: "Examination of voluntary interdistrict transfers confirms that, *as a remedy for an intradistrict violation*, such transfers comply with constitutional standards." Pet. App. 31a (emphasis added).

Although the *de jure* system was imposed by a provision of statewide application, neither the district court nor the court of appeals has made any findings about the continuing effects of that policy in other independent districts outside of the St. Louis district. There has thus been no determination that the suburban school districts retain vestiges of segregation caused by that provision and certainly no determination that the mix of students *between* city and suburban schools would now be different if that policy had not existed. See generally *United States v. Texas*, 680 F.2d 356 (5th Cir. 1982).

tricts. Pet. App. 34a-36a. We think that view misguided. As this Court noted in *Milliken* II, federal decrees are excessive "if they are aimed at eliminating a condition that does not violate the Constitution or does not flow from such a violation" or, in the alternative, "if they are imposed upon governmental units that were neither involved in nor affected by the constitutional violation, as in *Milliken* I." 433 U.S. at 282. It is true that objections of local school boards are themselves an important ground for questioning an interdistrict remedy, but that does not mean that compliant local school boards may enlarge the remedies against other parties to include redress of conditions not caused by a constitutional violation. Even if local school boards would gladly visit an interdistrict remedy on the State, the courts must nevertheless define the nature of the constitutional violation and observe the limitations on the scope of the remedy, *i.e.*, that the remedy cannot go beyond restoring the plaintiffs to their rightful position.[20]

We also think that the court of appeals has misunderstood the importance of the district lines in this case.

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[20] Although the court of appeals also indicated that its earlier discussions of paragraphs 12(a) and 12(c) had determined the legality of the current order, that view is perplexing for several reasons. First of all, as Judge Gibson convincingly points out, Pet. App. 80a-83a, the previous plans before the court had stressed cooperation among the parties not judicial compulsion. Moreover, while a limited paragraph 12(a) plan had been approved with one sentence of discussion (667 F.2d at 630), no actual plan developed under paragraph 12(c) had ever been before the court, much less a plan drafted to settle the interdistrict liability claims as well. See *Quern v. Jordan*, 440 U.S. 332, 347 n. 18 (1979). To invoke law of the case under such circumstances was, in fact, "a massive bootstrapping effort." Pet. App. 82a.

Even more seriously, however, the reference to law of the case shows a basic misunderstanding about the nature of remedial powers. For given the fact that the remedy has grown like Topsy while the violation has remained unchanged, the court of appeals can only be saying that once a violation has been found, the dimensions of the remedy are irrelevant. That is not the law of this case or any other case. See *Dayton* I, *supra; Columbus Board of Education v. Penick, supra.*

Those lines are not artificial boundaries, of importance only as they do or do not limit the remedy: they define the scope of the wrong. Unlike the situation in *Hills v. Gautreaux, supra*, where "[t]he relevant geographic area for purposes of respondents' housing options [was] the Chicago housing market, not the Chicago city limits," 425 U.S. at 299, the relevant area in this case is the school district in which plaintiffs lived. The State of Missouri did not discriminate against city students by denying them admission to suburban schools: the reason that city students attended city schools was that they lived in the City. What this case is about is that, within the City, black students and white students were kept apart. That segregation, and that alone, is the condition that must be eliminated "root and branch."

Even if *Milliken* I had never been decided, therefore, the order here would still be impermissible. No decision of this Court has ever held that a remedy for a violation limited to a single school system (or part of a school system) may automatically be extended to unaffected systems (or parts of the system) without findings that the impact of the violation reached that far. See *Dayton* I, *supra*; *Dayton* II *supra*; *Columbus Board of Education v. Penick, supra.* In *Dayton* I, for example, this Court expressly disapproved a remedy covering an entire school district, finding it "entirely out of proportion to the constitutional violations found by the District Court * * *." 433 U.S. at 418. In *Dayton* II, however, the Court upheld a system-wide remedy for the same district after the lower courts on remand had made specific findings regarding a system-wide impact arising from the violations. 443 U.S. at 541. Similarly, in *Columbus Board of Education v. Penick*, decided the same day as *Dayton* II, the Court again upheld a system-wide remedy as commensurate with the violations at issue. The Court observed that "both the District Court and the Court of Appeals found that the Board's purposefully discriminatory conduct and policies had *current, systemwide impact—an essential predicate * * * for a systemwide rem-*

edy." 443 U.S. at 466 n. 15 (emphasis added). It follows logically that, if a current, system-wide impact is necessary for a system-wide remedy, then a current, multidistrict impact is necessary for a multidistrict remedy.[21]

The concentration of black students in city schools is not unique to St. Louis or to cities that once separated their students by law. As Justice Powell has noted, "most large American cities" face situations "where inner-city populations comprise a large proportion of racial minorities and surrounding suburbs remain white * * *." *Columbus Board of Education v. Penick, supra*, 443 U.S. at 485 (Powell, J., dissenting). But where such conditions are "not attributable to any segregative actions" on the part of the State, the proper way to achieve greater integration is a matter for the political branches, not the federal courts, to address. *Pasadena City Board of Education v. Spangler, supra*, 427 U.S. at 436. The courts below failed to observe that essential distinction.

b. *The Quality Education and Rebuilding Program.* The other major parts of the plan are equally indefensible. The requirements for widespread improvements throughout the city school system, including a massive rebuilding program and all expenditures necessary to maintain a "AAA" rating, are simply a shopping list compiled by the plaintiffs and City Board. The district court, without any real analysis, then turned that shopping list into law.

Although this Court has previously approved "remedial education programs as part of a desegregation decree,"

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[21] Furthermore, although it is true that within a single district "[a]ctions and omissions by public officials which tend to make black schools blacker necessarily have the reciprocal effect of making white schools whiter," *Columbus Board of Education v. Penick, supra*, 443 U.S. at 466 n. 15, segregation within one district does not have a reciprocal effect on other independent districts. Thus, the existence of an all-white school in the St. Louis district would mean that fewer whites attended other schools in that district but would have no effect on racial distribution in suburban districts to which those students would not have gone anyway.

Milliken II, *supra*, 433 U.S. at 279,[22] the order in this case makes the order in *Milliken* pale by comparison. Its stated purpose, as set forth in the Settlement Agreement and in the opinion of the court of appeals, was not to correct for any identifiable after-effects of segregation but "to improve the quality of education throughout the St. Louis public schools * * *." See Pet. App. 43a, 183a-184a. To meet that ambitious goal, the Plan required a city-wide pupil-to-teacher ratio of 25:1 (20:1 in largely black schools); all-day kindergarten programs; more art, music and physical education teachers; "nurses, social workers, psychologists, and psychological examiners" at all city schools; preschool centers; library and media services; audio-visual services; and much more. Pet. App. 185a-192a. The total cost to the State has been estimated at 30 to 50 million dollars per year to start, with sharp increases expected later. Furthermore, the court ordered widespread physical improvements in the city schools—apparently in any amount that the City Board desired.[23]

Neither the district court nor the court of appeals offered any constitutional benchmark by which to judge this portion of the remedy. If those courts mean to suggest that each student has a constitutional right "to

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[22] In *Milliken*, the Court concluded that programs targeted at improving reading, eliminating effects of discrimination in testing, counseling victims of prior discrimination, and providing in-service training to teachers were justified by proper findings as "necessary to restore the victims of discriminatory conduct to the position they would have enjoyed in terms of education had these four components been provided in a nondiscriminatory manner in a school system free from pervasive de jure racial segregation." *Id.* at 282. The Court thus rejected the argument, advanced by the State, that the decree had to be limited to "remedying unlawful pupil assignments." *Id.* at 281.

[23] The district court ordered that "[a]ny amount raised for capital expenditures by the City Board through a voter-approved bond issue at any time during 1983-1984 shall be matched equally by the State of Missouri." Pet. App. 97a. That seemingly open pocket stimulated the City Board to inflate its bond proposal from the contemplated $23 million to $67 million, a change that may account for its defeat.

develop to the limit of his or her ability," Pet. App. 134a, or to attend AAA schools, Pet. App. 54a, that suggestion is plainly incorrect. This Court has held on several occasions that students have no right to public education at all. See *San Antonio Independent School District v. Rodriguez, supra*, 411 U.S. at 35; *Plyler v. Doe*, 457 U.S. 202 (1982); *Martinez v. Bynum*, 103 S.Ct. 1838, 1842-43 n. 7 (1983). "Education, of course, is not among the rights afforded explicit protection under our Federal Constitution. Nor do we find any basis for saying it is implicitly so protected." *San Antonio Independent School District v. Rodriguez, supra*, 411 U.S. at 35. Or, as the First Circuit has put it, "better quality education as a general goal is beyond the proper concern of the desegregation court." *Morgan v. Kerrigan*, 530 F.2d 401, 429 (1976).

To the extent, however, that the courts below try to justify these programs as a remedy for prior segregation, the attempt proves its own undoing. To begin with, it is almost nonsensical to think that the parties, while drafting a plan to impose on the State, took special pains to cut the remedy to fit the violation. Judge Bowman noted in his dissent that "[a]s might be expected, there is no indication that the parties to the negotiations made any attempt to measure the incremental segregative effects of the violation on which the plan rests or to remedy only those effects."[24] Pet. App. 92a. In any event, it is clear from the record that the quality education and rebuilding programs do not, by some curious accident, fit the violation. To take one example, if the court of appeals believed that the earlier segregation mandated by the State caused the city schools to have less than a AAA rating, that belief is completely undercut by the fact that those schools *had* a AAA rating every year from 1954 to the present except for five years

[24] One proponent of the Plan conceded that no urban school system in the United States has all the components included in the Settlement Plan. Pet. App. 93a n. 3. Yet, as we have noted (page 12, *supra*), the district court felt obliged to implement the Plan without any change.

(1974-78 and 1982-83) when they lost it because of the defaults of the City Board. (Indeed, at least for the time being, they have it again.) Nor can city students complain that they were somehow singled out for inferior treatment since their schools had AAA status at a time when many other school districts did not. To take a second example, given the fact that "[i]n the last twenty-four years, St. Louis voters have defeated thirteen [out of fourteen] proposed bond issues," Pet. App. 57a, it is self-evident that the City voters, not any unlawful actions by the State, are responsible for the condition of the city schools. As Judge Gibson observed, "[t]here is nothing to suggest that the condition is other than purely and simply the result of the neglect of the City Board to fulfill its responsibilities." Pet. App. 84a.[25]

We return again to the admonition that "a remedy must be designed as nearly as possible 'to restore the victims of discriminatory conduct to the position they would have occupied in the absence of such conduct.'" *Milliken* II, *supra*, 433 U.S. at 281, quoting *Milliken* I, *supra*, 418 U.S. at 746. Had the district court subjected the Settlement Plan to a proper inquiry, instead of swallowing it whole, we think it would have become evident that, whether or not segregation had ever existed in the St. Louis schools, the St. Louis school board would face the current conditions with regard to staffing, programs, and facilities because of its own failure to address those problems. As the Second Circuit has said, "a court must

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[25] Although the court of appeals did try to provide justifications for some other programs, albeit justifications not mentioned by the district court, those attempts largely serve to demonstrate how subjective a standard guides this remedy. For example, one objective of the Plan is "to enhance the appeal of the city school system"—a goal that is literally endless. Pet. App. 47a. Similarly, the need for all-day kindergartens (at a cost of more than $6 million per year) is partially explained by the fact that "many of the students come from single-parent families that did not provide them with the skills which would permit them to compete with other children at the first-grade level." Pet. App. 55a. The court makes no effort to relate the existence of that disadvantage to unconstitutional state action.

be alert not to permit a school board to use a court's broad power to remedy constitutional violations as a means of upgrading an educational system in ways only remotely related to desegregation." *Arthur v. Nyquist*, 712 F.2d 809, 813 (1983), *cert. denied*, No. 83-625 (April 16, 1984). The courts below showed no such alertness.[26]

3. *The Order Wrongfully Interferes with Decisions About State Programs.* The order in this case causes harm on several different levels. The most obvious, of course, is that it wrongfully drains state funds. Even more serious, however, is the fact that it seriously distorts the way in which decisions about state programs should be made.[27]

The relationship between the federal courts and state governments, a frequently awkward byproduct of federalism, has become even more sensitive in recent decades. Throughout that period, this Court and other federal courts have been asked time and again to define rights and prescribe remedies under generally-worded provisions of the Constitution. See *Rhodes v. Chapman*, 452 U.S. 337 (1981); *Youngberg v. Romeo*, 457 U.S. 307 (1982); *San Antonio Independent School District v. Rodriguez*, *supra*; *Bell v. Wolfish*, *supra*. It does not lessen the im-

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[26] Although we have concentrated in this section on the quality improvements throughout all city schools, the improvements directed at "non-integrated schools" are no better supported on this record. See Pet. App. 52a-53a. While the State is willing to compensate for any deficiencies caused by its prior policies, there has been no showing that the students now in "non-integrated schools" have been put at an educational disadvantage because of the earlier state law.

[27] In saying that the harm goes beyond the effect on the state treasury, we do not mean to slight that interest. Although an order requiring more integration or better education is seductive in the same way that an idealized view of prisons or mental facilities or any other state program might be, the practical consequences are less ideal. Unless a State can pull unlimited tax revenues from the pockets of its citizens, an unlikely prospect at the best of times, the true effect of such orders is often to take money away from other, perhaps even more needy, state programs.

portance of these provisions to say that they give almost no historical or practical guidance about the rights at issue. Yet, even as the rights have become more difficult to define and thus more subject to judicial overreaching, the affirmative obligations placed upon the states have become more imposing. A broad federal order affecting state prisons, or mental health facilities, or schools may cost, as in this case, literally hundreds of millions of dollars.

We do not deny, of course, that federal courts have a primary role to play in enforcing constitutional rights. But as the costs of state programs expand, and the pressure on state budgets increases, even local subdivisions may find resort to the federal courts attractive as a means of getting scarce state funds. In this case, for example, the plaintiffs were joined by the City Board as well as the suburban school boards in their effort to force state funding for their programs. In the usual case, if the City School Board wanted to exchange students with other districts, or to add more programs throughout its schools, or to rebuild facilities left unrepaired, it would either have had to bear the costs itself or seek the funds, in competition with other state programs, from the state treasury. Instead, by getting a federal court to adopt a settlement and then enforce it against a nonconsenting party, the local boards have been able to bypass state procedures entirely and yet receive a disproportionate helping of state funds. Under the circumstances, as Judge Bowman pointed out, "[n]one of them had any real incentive to prevent the others from piling their plates high with programs and funds that would benefit their school systems." Pet. App. 92a.[28]

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[28] This reaping of state funds, oddly enough, is the harvest of the City Board's refusal to obey the Constitution. As the district court found, after 1954 the State removed all obstacles to integration of schools throughout the State. 469 F. Supp. at 1314. Furthermore, the courts below, while purporting to correct only a violation for which both the City Board and the State have been held responsible, made the State liable for *all* the costs of certain programs, including the interdistrict transfers and the magnet schools. Pet. App. 96a.

It is essential that, in defining rights and devising remedies, federal courts understand the need for a stopping point. While assuring that constitutional rights are preserved, the courts also "must take into account the interests of State and local authorities in managing their own affairs consistent with the Constitution." *Milliken* II, *supra*, 433 U.S. at 281. See also *White v. Weiser*, 412 U.S. 783 (1973); *Karcher v. Daggett*, A-740, 52 U.S.L.W. 3717 (stay application) (Brennan, J., dissenting). Although "states have traditionally been accorded the widest latitude in ordering their internal governmental processes * * * and school boards, as creatures of the State, obviously must give effect to policies announced by the state legislature," *Washington v. Seattle School District No. 1*, 458 U.S. 457 (1982), the decision in this case has given one school board a revamped school system without regard to state policies or other state needs. If that decision is allowed to stand, with no more basis than is shown in this record, the limits on the equitable powers of the federal courts will effectively be meaningless.

CONCLUSION

The petition for a writ of certiorari should be granted.

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